

Before the
Federal Communications Commission
Washington, DC 20554

2001 OCT -5 A 11:37

In the Matter of)

Request for Waiver by)

East Brunswick Public Schools)
East Brunswick, New Jersey)Federal-State Joint Board on)
Universal Service)Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)FILED
File No. SLD-276585

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER**Adopted: October 30, 2001****Released: October 31, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a waiver request filed by East Brunswick Public Schools (East Brunswick), Brunswick, New Jersey.¹ East Brunswick seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny East Brunswick's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ The Administrator must post the FCC Form 470 on its web site, and the applicant is required to wait 28 days before making a commitment with

¹ Letter from Jamie Savedoff, East Brunswick Public Schools, to Federal Communications Commission, filed March 28, 2001 (Waiver Request).

² See *id.*

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

a selected service provider.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶ The Commission's rules allow the Administrator to implement an internal filing period for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received ("filing window").⁷ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. East Brunswick requests a waiver of the Funding Year 4 application window, which closed on January 18, 2001.⁹ SLD guidelines for Funding Year 4 required that FCC Forms 471 be postmarked no later than that date.¹⁰ Because the window closed on January 18, 2001, in order to be in compliance with the program's competitive bidding requirements and also file an application within the filing window, it was incumbent upon applicants in Funding Year 4 to have their FCC Forms 470 posted no later than December 21, 2000, 28 days before the close of the filing window.¹¹ East Brunswick submitted its FCC Form 470 on March 9, 2001.¹² In its SLD Waiver Request, East Brunswick acknowledged that it was late in submitting its FCC Form 470 and that it would also be late in filing its FCC Form 471.¹³ East Brunswick subsequently filed its FCC Form 471 application electronically on April 5, 2001, eleven weeks past the filing window deadline.¹⁴

4. On March 9, 2001, East Brunswick filed a waiver request with SLD, requesting that its FCC Form 470 and its FCC Form 471 be accepted for processing, notwithstanding their late submission.¹⁵ On March 16, 2001, SLD informed East Brunswick that because the Commission's

⁵ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ See Waiver Request; SLD web site, What's New (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

¹⁰ *Id.*

¹¹ 47 C.F.R. § 54.504(b)(3) and (4); § 54.511.

¹² See FCC Form 470, the East Brunswick Public Schools, East Brunswick, New Jersey, filed March 7, 2001 (East Brunswick FCC Form 470).

¹³ See Letter from Jamie Savedoff, East Brunswick Public Schools, to the Universal Service Administrative Company, filed March 9, 2001 (SLD Waiver Request).

¹⁴ See FCC Form 471, the East Brunswick Public Schools, East Brunswick, New Jersey, filed April 5, 2001 (East Brunswick FCC Form 471).

¹⁵ See SLD Waiver Request.

rules did not permit SLD to consider such requests, the applicant was required to submit any waiver requests to the Commission.¹⁶ East Brunswick filed the instant Waiver Request with the Commission on March 28, 2001.¹⁷

5. In its Waiver Request, East Brunswick explains that, although the information and technology director who was responsible for handling its FCC Form 471 application resigned from her full time position due to a medical condition, she was permitted to continue working for East Brunswick “in a very limited capacity” from October through January 1, 2001.¹⁸ East Brunswick further explains that it appointed a new director to replace the part-time director on January 17, 2001, but that the new director did not become aware of the application filing requirements until March 2001.¹⁹

6. We conclude that East Brunswick has not demonstrated a sufficient basis for waiving the Commission’s rules. The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.²⁰ Absent special circumstances warranting a deviation from the general rule, waivers of filing deadlines should not be granted. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.²¹ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. The applicant must also assume responsibility over the actions of those employees to whom it gives responsibility for submitting timely and proper requests for discounts in its name. Here, East Brunswick fails to present good cause as to why it could not timely file its application. We therefore find an insufficient basis for waiving the filing window deadline.

¹⁶ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jamie Savedoff, dated March 16, 2001 (Administrator’s Decision on Waiver Request).

¹⁷ See Waiver Request.

¹⁸ See *id.*


¹⁹ See *id.*

²⁰ 47 C.F.R. § 1.3; See, e.g., *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[W]aiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”).

²¹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), at para. 8 (“In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.”).

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by East Brunswick Public Schools, East Brunswick, New Jersey, on March 28, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert".

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau